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December 17, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 - 12th Street, SW - Room A325  
Washington, DC 20554

Re: Federal-State Joint Board on Universal  
Service: Promoting Deployment and  
Subscribership in Unserved and Underserved  
Areas, Including Tribal and Insular Areas,  
CC Docket No. 96-45

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its "Comments" in the above-captioned proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

  
Peter M. Connolly

Enclosures

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Before the  
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CC Docket No. 96-45

COMMENTS OF UNITED  
STATES CELLULAR CORPORATION

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December 17, 1999

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## **SUMMARY**

United States Cellular Corporation ("USCC") has supported a variety of service-specific rule changes in the wireless services designed to improve service to Indian tribal lands and other unserved and underserved areas. USCC reiterates its support for those rule changes.

USCC wishes to note however that unless the FCC's universal service support structures are modified to include wireless carriers the service problems on Indian tribal lands identified by the Further Notice of Proposed Rulemaking ("FNPRM") in this proceeding will remain unsolved.

The High Cost Order and Inputs Order in this docket, released in November describe the FCC's new high cost support system. However, neither order refers, in a meaningful way, to wireless carriers or how they will "fit" into the universal service cost structure and crucial questions about the operation of the universal service fund remain unanswered.

The FNPRM also reflects this incomprehension of wireless needs and capabilities.

What is needed in this proceeding, and in the docket of which this proceeding is a part, is a reform of universal service structure to provide for support to the lowest cost carriers, whether they are wireline or wireless.

Also, we suggest that if the FCC determines that a unique problem exists on tribal lands, then an adequate percentage of universal service funds should be set aside for such lands and wireline and wireless companies should compete, pursuant to agreements between the federal government, the states and the Indian tribes, to provide improved service.

We ask that the FCC reform its universal service support structures to provide for the meaningful inclusion of wireless carriers, in order to better serve Indian lands and other chronically underserved areas.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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Areas, Including Tribal and	)	
Insular Areas	)	
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COMMENTS OF UNITED STATES  
CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its Comments on the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.<sup>1</sup> USCC owns and/or operates cellular systems in 44 MSA and 101 RSA markets. Of those markets, 22 either overlap with or abut Indian "tribal lands."<sup>2</sup>

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204, released September 3, 1999 ("FNPRM").

<sup>2</sup> "Tribal lands" are defined as "those areas in which principle of tribal sovereignty and federal support for tribal self-determination apply" in the "wireless" Notice of Proposed Rulemaking which is a companion to the FNPRM. See In the Matter of Extending Wireless Telecommunications Services To Tribal Lands, WT Docket No. 99-266, Notice of Proposed Rulemaking FCC 99-205, released August 18, 1999, ("NPRM") Footnote 2. The FCC seeks comment, at Paragraphs 50-53 of the FNPRM, on alternative definitions of tribal lands. USCC and its counsel have no expertise in Indian law but would only reiterate the need, which all carriers share, for jurisdictional and regulatory certainty  
(continued...)

Accordingly, USCC has a large stake in any action the FCC may take to improve service to unserved and underserved areas, including tribal lands.

I. In Order To Improve Service To Tribal  
Lands The FCC Must First Reform The  
Universal Service Support Structure

In its Comments filed in response to the NPRM in the companion "wireless" proceeding (WT Docket 99-266), USCC supported a variety of changes in the rules of the "wireless" services designed to facilitate provision of service to tribal lands by CMRS carriers. Among those proposed changes were a relaxation of the FCC's transmitting power and antenna height limits, a liberalization of "buildout" requirements in the LMDS, PCS, SMR, and 39 Ghz services, new rights to extend into "unserved" tribal lands on the part of wireless licensees in neighboring markets, relaxing restrictions on the use of their spectrum by private radio licensees, as well as considering the geographic configuration of tribal lands in defining new service areas and granting bidding credits to applicants in auctions who are willing to offer service to tribal lands.

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<sup>2</sup>(...continued)

and a secure legal environment in which to operate if improved services are to be provided on tribal lands. That need should inform the FCC's deliberations in all aspects of this proceeding.

As USCC and others have pointed out, to the extent that such changes in the FCC's rules can lower the costs to CMRS carriers of providing service to tribal lands they will facilitate the provision of such service and are thus worthy of support. However, if such costs are not lowered enough and the FCC simply offers carriers the opportunity to provide service under circumstances which do not make economic sense, the result will be little change in the status quo, which will also mean that the current miserable conditions on some tribal lands will not be improved by the telecommunications revolution, as they might be if the right policies were in place.

It is our belief, which was supported by the FCC in the FNPRM, that the use of wireless service will be crucial to a national effort to improve telephone service to tribal lands and other unserved and underserved areas.<sup>3</sup> CMRS carriers, and especially cellular carriers, have the necessary infrastructure and cost structure with which to make wireless service a real possibility in presently unserved remote locations.<sup>4</sup>

But, in order to unleash the potential of wireless service, the FCC must take the necessary steps to include wireless carriers within the "high cost" universal service support structure, which it has not yet done. We believe, for reasons we have discussed

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<sup>3</sup> See FNPRM, Para. 5.

<sup>4</sup> See also NPRM, Paras. 9-10.



previously and will reiterate below, that such universal service reform offers the best means of solving the serious service problems which both the FNPRM and NPRM identify.

However, the Commission has not yet understood this.

On November 2, 1999, the FCC released its landmark orders concerning the restructuring of universal service support for non-rural carriers.<sup>5</sup>

The High Cost Order and its companion "Inputs Order"<sup>6</sup> describe the FCC's new non-rural high cost support mechanism and the methods by which wireline "costs" were used as the "building blocks" of that mechanism.

However, what neither order contains, despite the best efforts of Western Wireless, USCC, and other wireless carriers,<sup>7</sup> is any real discussion, beyond "competitive neutrality" platitudes, of how wireless carriers' cost structures are to be fitted into the new universal service support structure. It would be difficult to discern from either order that wireless carriers even exist, much

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<sup>5</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, released November 2, 1999 ("High Cost Order")

<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECS, CC Docket Nos. 96-45, 97-160 Tenth Report and Order, FCC 99-304, released November 2, 1999 ("Inputs Order").

<sup>7</sup> See, e.g., USCC Comments in Docket 96-45, filed August 6, 1999; USCC Comments in Docket 96-45, filed September 2, 1999.

less that they comprise a huge and growing proportion of the nation's telecommunications infrastructure and can be a vital resource in serving unserved and underserved areas, including tribal lands.

For example, we still do not yet know the FCC proposes to measure distinctive wireless costs for universal service purposes. Nor does the FCC discuss the "hold harmless" formula adopted in the High Cost Order in relation to (previously unsubsidized) wireless carriers, except to say that the support provided under that formula will be "portable."<sup>8</sup>

However, in that connection, the Commission ignores the basic question of whether wireless and wireline carriers may both receive support for the different "lines" they may provide to the same "high cost" customers. Further, it offers no criteria for determining which carrier is to receive support if both carriers cannot receive it.

Nor did the FCC clarify whether wireless carriers may obtain ETC status for the mobile service they currently provide or whether they have to provide any type of "wireless local loop" ("WLL") service to be designated as ETCs. We believe that the services eligible by federal universal support mechanisms under Section

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<sup>8</sup> It might be noted that "portability" of support will not be helpful when the problem is that of bringing service to people who do not now have it, as opposed to receiving support for customers who leave one service provider for another.

54.101(a) of the FCC's rules may be provided by cellular and PCS carriers providing their present wireless services and a WLL service configuration should not be necessary to be designated as an ETC. Additional service requirements imposed on carriers of course add large costs, which inevitably result in higher prices, thus defeating the very purpose of the USF fund. That approximately 83 million Americans have chosen wireless service is a testimony to the fact that current wireless service has met their telecommunications needs. The FCC should not impose additional service requirements where the current problem is no service.

But the FCC must resolve these issues, which are basic to determining whether wireless carriers will have any role in the USF system. For if the Commission continues to neglect them, the "disconnect" between its goal of achieving improved service to tribal lands and the necessary means to achieve that goal will persist and prevent any progress from being made.

For example, under the formula adopted in the High Cost Order, non-rural carriers in only seven states, Alabama, Kentucky, Maine, Mississippi, Vermont, West Virginia, and Wyoming would receive support,<sup>9</sup> were it not for the "hold harmless" support to be paid,

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<sup>9</sup> See Public Notice, "Common Carrier Bureau Releases State-By-State Universal Service High-Cost Support Amounts For Non-Rural Carriers, and Forward-Looking Cost Results," DA 99-2399, released November 2, 1999.

for an unspecified period of time, to other carriers now receiving support under current support mechanisms.

We believe the FCC must not adopt a mechanism for rural carrier high cost support comparable to that adopted in the High Cost Order or the Inputs Order. For if it did, it would essentially eliminate the possibility of wireless carriers providing supported service on tribal lands in such states as Arizona, New Mexico, South Dakota, or Washington State, none of which were among the favored seven. We suggest a different model in Section III of these Comments.

In any case, no wireless carrier, even one with the infrastructure in place to make service to now unserved tribal lands a real possibility, will move forward to offer such service unless it can earn a reasonable, albeit modest, profit by doing so. And that will probably not be possible without some form of universal service support.

## II. The FNPRM Does Not Offer Any New Hope To Wireless Carriers

The FCC's failure to come to grips with this issue in the High Cost Order and Inputs Order is also reflected in the FNPRM. The FNPRM largely consists of lengthy discussions of issues which are essentially peripheral to the central problem of wireless service expansion and improvement in tribal lands, however significant they may be from other legal standpoints.

For example, the FNPRM includes, at Paragraphs 32-53, a very detailed discussion of the history of federal, state, and tribal jurisdiction over tribal lands and an overview of current debates over the definition of such lands. The FNPRM does a good job of discussing the enormous jurisdictional complexity involved in improving service on Indian tribal lands, which is indeed a crucial issue. However, we would stress that even if all jurisdictional issues can be resolved to all parties' satisfaction actual improvements in service are unlikely as long as wireless carriers have no part in the universal service system.

The Commission, at Paragraphs 54-73 of the FNPRM, discusses service to tribal lands in relation to the existing wireline high cost support structure. The Commission refers to existing high cost support mechanisms in relation to "telephone study areas" and the relationship between such study areas and tribal lands, as well as to possible revisions to the wireline "lifeline" support program to assist Indian tribes. The difficulty with this discussion from the wireless standpoint is that there is not one word in those paragraphs referring to wireless carriers or to the constructive role they could play in a reformed system. Even "commenting" on this discussion is difficult because the conceptual gap is so large.

Paragraphs 73-82 of the NPRM are taken up by a discussion of the existing structure for designating eligible telecommunications

carriers and a possible exception to that structure created by Section 214 (e)(6) of the Act in the context of tribal lands.

USCC certainly supports FCC designation of CMRS carriers as Eligible Telecommunications Carriers ("ETCs") under Section 214 (e)(6) when such carriers serve Indian lands over which it is determined by the FCC that the states have no jurisdiction or when states have renounced their rights to regulate CMRS carriers for all purposes, including making ETC designations. USCC also supports the arguments made by Western Wireless and others in support of a reading of Section 214 (e)(6) which will facilitate ETC designations by the FCC. But without a change in the high cost support structure, mere designation of a CMRS carrier as an ETC on an Indian reservation will do little good.

In 2000, the Commission will finally turn its attention to the reform of its universal service support system applicable to carriers defined as "rural" in the Communications Act.

If a fair and competitively neutral universal service system is to be created in rural areas, it will have to be one in which support flows to the carrier best able to serve customers in high cost areas at the lowest cost, whether the technology used is wireline or wireless in nature. In order to achieve that goal, the FCC must focus on the basic structural and regulatory differences between LECs and wireless companies discussed by USCC and other

wireless carriers in this docket and attempt to design a system which is fair to both types of carriers.

In a fair system, wireless carriers would be designated as ETCs and the universal service cost model applied by the FCC would incorporate a means of calculating wireless costs and measuring them against those of their wireline competitors.

USCC stands for certain basic USF principles, which it will discuss in greater detail in future filings. USCC believes that competitive carriers seeking ETC designation should be subject to uniform and reasonable requirements and not to the discriminatory and unlawful barriers they meet in many states. USCC supports the concept of competitive neutrality in the universal service program. It believes that subsidies should be explicit and not hidden in the rate structure of incumbent LECs and that support should be portable. Finally, it is crucial that support be targeted to the most efficient carriers serving customers in high cost areas.

Only through creation of an efficient and fair universal service system will improved service in truly difficult circumstances, such as on Indian lands, be possible.

### III. The FCC Should Consider A Separate Fund For Indian Lands

It may be that despite the changes discussed above, that the persistent problem of lack of service on Indian tribal lands discussed in the FNPRM will persist. And, if the FCC determines

that a unique problem exists on tribal lands, not susceptible to other solutions, then an adequate percentage of the universal service fund should be set aside for tribal lands and wireline and wireless companies should compete, pursuant to agreements between the federal government and the tribes, to provide supported services on such lands.

It will only be as a result of such competition that improved service will be provided to persons living on Indian tribal lands and in other underserved areas. Further, only such competition between wireless and wireline carriers will help to ensure that USF costs will be as low as possible.

A model of course exists for the direction of supported services toward recipients deemed to be in special need of them, namely that set forth in Section 254(h) of the Communications Act. That section provides for discounted rates to schools, libraries and rural health care providers, with reimbursement to the carriers providing the services. Crucially, under that section, it is not necessary that carriers be designated as ETCs in order to be eligible for reimbursement and wireless carriers are fully eligible to and, in fact, do participate in the program.<sup>10</sup>

The procedure for reimbursement of carriers for discounted services to schools, libraries, and rural health care providers has

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<sup>10</sup> See In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Fourteenth Order on Reconsideration, FCC 99-256, released November 3, 1999.



been developed and is administered by the Universal Service Administrative Corporation ("USAC"). Though USAC's discount and reimbursement processes are very complex and bureaucratic, there is little doubt that the programs are functioning in accordance with congressional intent.

If it is determined that telecommunications services are comparably necessary on Indian lands, then the FCC may be able to make use of USAC's resources by establishing a separate fund perhaps administered by USAC with comparable reimbursement procedures.<sup>11</sup> We would also ask that the FCC attempt to create a system which would be more "user friendly" than USAC's current procedures.

But unless the structure of the USF is reformed as outlined above, with perhaps the added component of a separate fund for tribal lands, no matter how the FCC may change its service-specific technical rules or how earnestly the federal government, the carriers, and the Indian tribes may work to resolve jurisdictional disputes, the fundamental realities of inadequate service on tribal lands will remain.

It is overdue that the FCC face up to these issues, both in this proceeding and in the larger docket of which it is a part.

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<sup>11</sup> Such a program would of course not have the automatic exemption from the necessity for ETC designation to provide the services provided by Section 254(h)(1)(B), thus making reform of the ETC selection process all the more necessary.

Conclusion

For the foregoing reasons, we ask that the FCC seize this opportunity to reform its universal service structures to provide for the meaningful inclusion of wireless carriers, or else Indian lands and other chronically underserved areas will remain underserved.

Respectfully submitted

**UNITED STATES CELLULAR CORPORATION**

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